

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

JOHN RUSSOPOULUS, 97-A-1208,

Plaintiff,

-vs-

**Correction Officer CATER, Correction
Officer RYDZA, Correction Officer
LEWALSKI, Correction Officer
JOHNSON, and Sergeant JOHN DOE,**

Defendants.

**DEFENDANTS CATER, RYDZA,
LEWALSKI, AND JOHNSON'S
ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT**

03-CV-0249 A(Sc)

Defendants, C.O. Cater, C.O. Rydza, C.O. Lewalski, and C.O. Johnson (“defendants”), by and through their attorney, Eliot Spitzer, Attorney General of the State of New York, Michael A. Siragusa, Assistant Attorney General, of counsel, set forth their Answer to Plaintiff’s Amended Complaint, as follows:

1. Deny the allegations set forth in paragraphs 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 31, 32, 33, and 34.
2. Lack sufficient knowledge to either admit or deny the allegations set forth in paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 25, 26, 27, 28, 29, 35, and 36, and therefore deny same.
3. In response to paragraph 30, defendants answer the allegations the same as their answers to the individual allegations referred to in the complaint.
4. Deny each and every allegation not admitted, denied, or otherwise responded to above, except insofar as such allegation constitutes an admission against plaintiff.

FIRST AFFIRMATIVE DEFENSE

5. The complaint fails, in whole or in part, to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

6. Defendants, at all times relevant hereto, acted without malice and under the reasonable belief that their actions were proper and in accordance with existing law.

7. Defendants, at all times relevant hereto, acted in good-faith in the lawful exercise of the discretion committed to him/her under federal and/or state law and are immune from liability.

8. Defendants did not violate any clearly established statutory or constitutional rights of the plaintiff which a reasonable person would have known, and therefore, are entitled to qualified immunity.

THIRD AFFIRMATIVE DEFENSE

9. The alleged conduct as set forth in plaintiff's complaint, in whole or in part, was properly within the discretionary authority committed to the defendants to perform his/her official functions, and the relief prayed for would constitute an improper intrusion by the federal judiciary into said discretionary authority.

FOURTH AFFIRMATIVE DEFENSE

10. Defendants have at all times acted in conformity with all federal and state constitutional, statutory and/or regulatory provisions.

FIFTH AFFIRMATIVE DEFENSE

11. Defendants lack personal involvement in the matters alleged in this action and, therefore, plaintiff cannot maintain a claim against them under 42 U.S.C. Sec. 1983.

SIXTH AFFIRMATIVE DEFENSE

12. The doctrine of *respondeat superior* does not apply to actions brought pursuant to 42 U.S.C. Sec. 1983, and bars relief to the plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

13. This action is barred, in whole or in part, pursuant to Sec. 24 of the New York State Corrections Law.

EIGHTH AFFIRMATIVE DEFENSE

14. This action is barred, in whole or in part, pursuant to the Prisoner Litigation Reform Act insofar as plaintiff has not alleged a physical injury.

DEMAND FOR JURY TRIAL

15. Defendants demand trial by jury.

WHEREFORE, defendants respectfully request judgment denying the relief sought and dismissing the complaint in all respects.

Dated: Buffalo, New York
October 15, 2004

ELIOT SPITZER
Attorney General of the
State of New York
Attorney for Defendants
BY:
s/ Michael A. Siragusa
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03-CV-0249 A(Sc)

Correction Officer CATER, et al.,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2005, I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system.

And, I hereby certify that on August 2, 2005, I mailed the foregoing, by the United States Postal Service, to the following non-CM/ECF participant:

William A. Gerard, Esquire
71 Woods Road
P.O. Box 717
Palisades, New York 10964

Dated: August 2, 2005

ELIOT SPITZER
Attorney General of the
State of New York
Attorney for Defendants
BY:
s/ Michael A. Siragusa
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